

## LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT ("Agreement") is entered into this ~~10th~~ day of DECEMBER, 2012, by and between the City of Desert Hot Springs (the "City") and Green, de Bortnowsky & Quintanilla, LLP (the "Firm").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. The City is in need of City Attorney and Successor Agency legal services.
2. The Firm represents that is qualified by virtue of experience, training, education and expertise to accomplish the services necessary under this Agreement.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Term of Agreement.

Subject to the early termination provisions set forth in this Agreement below, the term of this Agreement shall be for one (1) year commencing on the date of execution, which shall automatically annually renew on the same terms unless the Parties give written notice to the other party thirty (30) days prior to the expiration of the then current term of its desire to terminate this Agreement.

2. Services to be Provided.

The Firm shall designate Steven B. Quintanilla to serve as City Attorney for the City and general counsel for affiliated entities under this Agreement (unless otherwise directed by the City) and provide the City the General Services as described in Exhibit A, attached hereto, and Litigation Services, as described in Section 3.2 .

3. Compensation -- The Firm shall be compensated as follows:

3.1 General Services. The Firm shall provide the General Services, identified on Exhibit A, for a flat rate of \$35,000 per month.

3.2 *Litigation Services.* The Firm shall provide Litigation Services at the following rates:

Senior Attorneys	\$195.00 per hour
Junior Attorneys	\$175.00 per hour
Paralegals	\$130.00 per hour
Law Clerks	\$90.00 per hour

Litigation Services shall only include services provided by the Firm that are initiated by the City and its affiliated entities or in response to a lawsuit filed against the City or its affiliated entities in a proper court of law. The Firm shall not provide Litigation Services for litigation assigned to the City's litigation risk management contractors, the Public Entity Risk Management Authority ("PERMA") and the Employment Risk Management Authority ("ERMA"), unless PERMA or ERMA assigns the Firm to represent the City in such litigation.

3.3 *Billing.* The Firm agrees to provide detailed invoicing of all billing for services on a monthly basis. Monthly invoices shall begin on the first of the month following the execution of the Agreement herein. All charges must be itemized by the Firm, showing in detail the work task performed during the billing entry. All charges must be presented in a line item format and in a manner such that each task is separately explained in reasonable detail, and with a specific time allocation recorded, for each task. For Litigation Services, the invoice shall include the amount, billing rate and basis for calculation of all fees and costs.

All billing for work performed under this Agreement shall be sent to the following:

City

3.4 *Reimbursements for Third Party Expenses.* The Firm shall keep accurate records of all costs and expenses. These records shall be made available to the City upon reasonable request.

The City will reimburse actual, reasonable and necessary out of pocket expenses incurred by the Firm in performing any services under this Agreement as follows:

- a. Statutory fees, witness fees, reporters fees, stenographic transcription, jury fees, and the cost of serving process actually incurred by the Firm.
- b. Charges from third parties relating to the City's business actually incurred by the Firm.

To obtain reimbursement, the Firm shall submit a monthly summary of expenses simultaneously with billing invoices. The City will not reimburse the following expenses incurred by the Firm in performing any services under this Agreement:

- a. Travel or mileage.
- b. Photocopying, mailing, or facsimile charges.
- c. Electronic research service charges.

### 3.5 *Expert Consultations and Witnesses.*

Expert consultations and witnesses, and any investigators, may be retained on terms acceptable to the City, authorized and approved in advance, for which the City shall reimburse the Firm or pay investigators, consultants or experts directly. In no event shall the Firm retain any service of any expert, investigator or consultant without first receiving express authorization and approval from the City.

## 4. Insurance.

### 4.1 *Professional Errors and Omissions Insurance.*

The Firm shall obtain and maintain in full force and effect at all times Professional Errors and Omissions Liability Insurance. Such insurance shall provide coverage in an amount not less than three million dollars (\$3,000,000) per occurrence. The Firm shall also obtain and maintain in full force and effect at all times Automotive and General Liability Insurance in an amount not less than two million dollars (\$2,000,000) per occurrence. The insurance policies required under this paragraph shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage, or in limits, except after thirty (30) days prior written notice, by certified mail return receipt requested, given to the City.

Said insurance policies shall provide coverage to the City and its affiliated entities for any damages or losses suffered by the City and/or its affiliated entities as a result of any error or omission, or neglect by the Firm which arise out of the services rendered under this Agreement.

The Firm shall, within ten (10) days after entering into this Agreement, deposit with the City a certificate of insurance certifying that all insurance required herein is, and will be, in full force and effect from the time the Agreement is entered into until completion or termination of this Agreement. The Certificates of Insurance must be renewed at least fifteen (15) days prior to expiration.

All insurance required shall be carried only by responsible insurance companies licensed to do business in California and shall name as additional insured the City and its affiliated entities, their officials, officers, employees, agents and representatives. All policies shall contain language to the effect that: (1) the insurer waives any right of subrogation against the City and the City's officials, officers, employees, agents, and representatives; (2) insurance shall be primary non-contributing and any other insurance carried by the City shall be excess over such insurance; and, (3) such insurance shall not be cancelled or materially changed except after thirty (30) days notice by the

insurer to the City by certified mail. The Firm shall furnish the City with copies of all applicable policies promptly upon receipt.

Nothing in this section shall be construed to make the Firm other than an independent contractor/consultant for all purposes.

The Firm agrees to notify the City in the event that the limits fall below the coverage stated above or if the insurance policies noted here are allowed to lapse and substitute insurance is, or is not, obtained.

#### 4.2 *Workers Compensation Insurance.*

The Firm shall obtain and maintain workers compensation insurance in accordance with section 3700 of the California Labor Code in an amount not less than one million dollars (\$1,000,000) per occurrence.

#### 5. Indemnification.

The Firm agrees to protect, hold harmless, defend, and indemnify the City, its employees, elective or appointive boards, officers, agents, agenda and affiliates, from any and all loss, claims liabilities, expenses, or damages of any nature whatsoever, including attorneys fees, arising out of or in any way connected with the performance of, or services rendered by, the Firm, the Firm's agents, officers, employees, sub-contractors or independent contractors of the Firm, except where the loss or liability is due to the negligence or willful misconduct of the City.

#### 6. City Agent.

The City Council is the City's agent for purposes of this Agreement. Whenever authorization or approval is required, the Firm understands that the City Council has the authority to provide the authorization or approval, except where the City Council has expressly delegated authority to the City Manager.

#### 7. Independent Contractor.

The Firm, and anyone employed by the Firm, are not and shall not be, deemed employees of the City. The Firm is solely responsible for the payment of employment taxes, workers compensation taxes, and any other taxes for employees.

#### 8. Conflict of Interest.

The Firm represents that it presently has no material financial interest other than that which may be held by the general public and shall not acquire any interest, direct or indirect, in any contract or decision made on behalf of the City which may be affected by the services to be performed by the Firm under this Agreement. The Firm further agrees that no person having any such interest shall be

employed by them. If the Firm, or their employees, acquires a direct or indirect personal interest, such interest shall be immediately disclosed to the City and the interested individual shall abstain from any contracts or decisions under this Agreement.

In addition to the proscriptions regarding conflicts of interest imposed on the Firm by the Business and Professions Code and by California Rules of Professional Conduct, the Firm represents that no attorney of the Firm shall represent clients before any board, commission, committee or agency of the City or represent any client with interests adverse to the City, unless a bona fide conflict of interest waiver is executed by both the City and other applicable parties. Furthermore, the Firm shall at all times avoid conflicts of interest or the appearance of a conflict of interest in performance of this Agreement. The Firm shall immediately notify the City Manager of any circumstances, or change of circumstances, that may provide for the potential for a conflict of interest, or actual conflict of interest.

9. Non-Liability of Officials/Employees of the City.

No official or employee of the City shall be personally liable for any default or liability under this Agreement.

10. Compliance with Law.

The Firm shall comply with all applicable laws, ordinances, codes and regulations of the Federal, State and local governments. In addition, the Firm agrees to abide by all ethical and moral standards as represented by the Rules of Professional Conduct as applied to the California State Bar.

11. Work Product.

All documents, or other information developed or received, by the Firm shall be the property of the City. The Firm shall provide the City with copies of items upon reasonable demand or upon termination of this Agreement.

12. Notices.

All notices shall be personally delivered or mailed, via first class mail, to the below listed address. In addition, such addresses shall be used for delivery for service of process. The Firm agrees to notify the City within ten (10) days of the date of any change of address and agree to keep an updated address with the applicable Courts on any matters that the Firm is representing the City.

- a. Address of the Firm is as follows:

Steven B. Quintanilla, Esq.  
Green, de Bortnowsky & Quintanilla, LLP  
35-325 Date Palm Drive, Suite 202  
Cathedral City, California 92234  
Telephone: (760) 770-0873  
Facsimile: (760) 770-1724  
Electronic Mail: squintanilla@gdqlaw.com

- b. Address of the City is as follows:

Mayor/City Manager  
City of Desert Hot Springs, City Hall  
65-950 Pierson Blvd.  
Desert Hot Springs, CA 92240

13. Early Termination of Agreement.

The City shall have the right to terminate this Agreement with or without cause at any time pursuant to the Ralph M. Brown Act. The Firm shall have the right to terminate this Agreement with 30 days prior notice to the City. The Firm, however, shall not substitute out as the Firm of record on any matters in which they may be representing the City without first obtaining written consent from the City, or first obtaining an appropriate court order, allowing the Firm to withdraw as counsel of record.

14. Limitations Upon Assignment/Subcontracting.

The Firm agrees that no portion of their performance or services rendered under this Agreement shall be assigned by the Firm or subcontracted to any other without prior written authorization and approval of the City.

15. Non-Discrimination.

The Firm represents that it is an equal opportunity employer and shall not discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation.

16. Time of Essence.

Time is of the essence in the performance of this Agreement.

17. City to Execute.

The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement as herein stated.

18. Entire Agreement.

This Agreement represents the Parties' final and mutual understanding. This Agreement supersedes any previous agreements, oral or written.

19. Modification.

This Agreement shall not be modified or replaced except by another signed, written Agreement, properly executed by the Parties.

20. Waiver.

The waiver of any breach or any provision of this Agreement does not waive any other breach of that term, or any other term, in this Agreement.

21. Partial Invalidity.

If any part of this Agreement is found for any reason to be unenforceable, all other parts nonetheless shall remain in force.

22. Governing Law.

This Agreement shall be interpreted and construed in accordance with the laws of the State of California. Any action commenced regarding this Agreement shall be filed in the Indio Branch of the Riverside County Superior Court.

23. Interpretation.

This Agreement shall be interpreted as though prepared by both Parties.

24. Survival.

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the City and the Firm shall survive the termination of this Agreement.

[THIS PORTION LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, these parties have executed this Agreement on the day and year shown hereinabove.

Date: 12/18/12

Mayor

Date: \_\_\_\_\_

CITY OF DESERT HOT SPRINGS

By: 

Approved as to form:

By:   
City Attorney

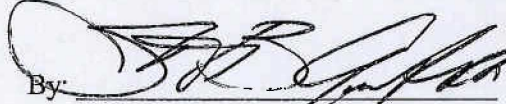
Date: 12/19/12

ATTEST:

By:   
City Clerk

Date: 12/18/12

Green, de Bortnowsky & Quintanilla, LLP

By:   
Steven B. Quintanilla, Esq.

## **EXHIBIT A**

### **GENERAL SERVICES**

The Firm will perform services for the City and its affiliated entities on an as-needed basis. General Services shall include the following duties and responsibilities :

1. Review and/or prepare staff reports, ordinances, resolutions, orders, agreements, forms, notices, declarations, certificates, deeds, leases, and other documents required by the City;
2. Consult with the City Council and City staff as needed – rendering of legal advice and opinions (both oral and written) concerning legal matters that affect the City including new legislation and court decisions;
3. Research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise Council and management staff on legal matters pertaining to City operations;
4. Provide legal services pertaining to property acquisition, property disposal, public improvements, public rights of way and easements, and matters relating to public utilities;
5. Coordinate the work of outside legal counsel as needed and as directed by the City Council ;
6. Provide clear and concise legal advice and consultation on a daily basis as requested and required to members of the City Council, City Manager and staff;
7. Attend City Council meetings and be prepared to advise the Council on matters on the agenda as well as procedural or substantive issues that arise during the meeting. Attendance at Planning Commission is also required. Attendance at other Council subcommittee meetings may be requested from time to time;
8. Provide guidance concerning the requirements of the Brown Act, Conflict of Interest, AB1234 compliance and Political Reform Act, the Public Records Act, due process and other legal requirements imposed by statute and common law;
9. Prepare, review and revise staff documents, including, but not limited to, initiation of memorandums concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions on appeal, and staff reports as determined by the City Manager;
10. Represent the City in inter-agency projects and other legal matters;
11. Provide legal counsel services for code enforcement prosecution; work closely with city staff

to compel property owners to comply with the City's Municipal Code, City ordinances, State laws and Health and Safety regulations as they relate to individual properties;

12. Provide legal counsel on a variety of City disciplines, including housing, zoning, building, litter, sign, fire and health and safety ordinances;

13. Provide legal counsel on various types of violations prosecuted include public nuisances, substandard housing, abandoned and structurally unsafe buildings, illegal dumping or storage, illegal businesses, fire hazards, destruction of environmentally sensitive land, un-permitted uses in residential zones, and water theft;

14. Provide legal counsel that will assist enforcement and participation toward the development and appropriate long term strategy to abate nuisance activity;

15. Review contracts, bid specifications, and purchasing documents for the purposes of legal and policy compliance, appropriate risk transfer and risk analysis and avoidance;

16. Provide legal services regarding personnel matters, labor relations matters, including arbitrations, mediations, fact findings, labor negotiations, and personnel investigations, fact-finding hearings, and PERB matters;

17. Provide legal services regarding whether to file claims or commence litigation;

18. Provide legal services regarding matters of environmental compliance as they pertain to actions by the City;

19. Provide legal services regarding matters of property rights and property management;

20. Provide legal services to the Successor Agency

21. Provide legal services related to processing land use entitlements, general plan, specific plan and zoning amendments, land use entitlement processing, and compliance with state and federal environmental laws.